

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals
District of Columbia

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BRIEF FOR APPELLEE

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9846

REGINALD P. WITTEK, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE MUNICIPAL COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

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United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9646

REGINALD P. WITTEK, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE MUNICIPAL COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

OPINION BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia appears at App. 44-51.

JURISDICTION

This is an appeal from a judgment of the Municipal Court of Appeals for the District of Columbia entered on September 10, 1947 (App. 52), affirming a judgment of the Municipal Court for the District of Columbia entered on May 15, 1947 (App. 43). On September 10, 1947, appellant petitioned this court for allowance of an appeal under Title 11, D. C. Code, sec. 773. This court entered an order on January 16, 1948, allowing an appeal, but limiting the review to two questions (App., p. 53).

QUESTIONS PRESENTED

1. Whether the conditions imposed by the District of Columbia Emergency Rent Act on suits for possession apply where such a suit is brought by the United States as landlord.

2. Whether the Municipal Court has jurisdiction of civil suits brought by the United States in which the amount claimed does not exceed \$3,000.00, or whether the District Court has exclusive jurisdiction over all civil suits brought by the United States in the District of Columbia.¹

STATEMENT

On October 15, 1946, the United States filed an amended complaint for possession of real estate (App. 10-11), in which it was alleged as follows: that the United States was entitled to possession of premises located in the District of Columbia, held by the defendant without right, and that the defendant was in possession of the premises as a month to month tenant of the plaintiff; that the property is a housing unit in a Defense Housing project known as "Bellevue Houses" which is owned by the United States and was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 56 Stat. 872, 883; that under the authority of said section 201 of the 1941 Act, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U. S. C. sec. 1544, and Executive Order 9070, Fed. Reg., Vol. 7, p. 1529, the management and administration of Bellevue Houses were transferred to the National Housing Administrator; that the Administrator by lease delegated such authority and management to the National Capital Housing Authority; that the defendant entered into possession during August 1946,² upon payment of a monthly rental of \$38.20; that the rent was subsequently raised to \$43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Act, 1941, and section 7 of the Lanham Act; that the defendant refused

¹ These questions are stated in the precise terms used by this Court in its order allowing the appeal (App., p. 53).

² This was a typographical error. Appellant suggests that it should have read "1941" (Br. 3); in his answer he alleged that he entered into possession in 1943 (Ans., App. 15, Eighteenth Defense, par. 3). The actual date is not important here.

to execute a lease calling for the new rental and refused to pay such rental; that a thirty day notice to quit was served upon the defendant on February 28, 1946, terminating the tenancy, and that the increase in rent was made without regard to the provisions of the District of Columbia Rent Act of December 2, 1941, 55 Stat. 788, Title 45 D. C. Code, sections 1601-1611. The amended complaint also alleged that the ground upon which possession was sought was that the tenancy was terminated by the notice to quit, served upon defendant as required by Title 45 D. C. Code, sec. 902.

Thereafter a motion to dismiss filed by the defendant was overruled (App. 12). Thereupon defendant filed an answer setting forth various defenses (App. 13-16). In pretrial proceedings (App. 16-17) the parties stipulated that the action by the United States is grounded upon notice to quit; that the premises are housing accommodations in the District of Columbia; that no breach of covenant is involved; that the houses were constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940; that in 1941 the United States took title to the premises; and that the notice to quit, dated February 25, 1946 (Def. Ex. 3, App. 21-22, 49) was received by the defendant.

The parties further stipulated that the cause might be finally disposed of by the court upon the amended complaint, answer, interrogatories and plaintiff's answers thereto, the pre-trial stipulation, and certain exhibits for the plaintiff and the defendant (App. 17-19). These exhibits will be referred to only where necessary in the course of argument. The stipulation included defendant's requested findings which were based on various defenses (App. 19-20).

On April 21, 1947, the trial court filed a memorandum (App. 41-42) in which it dealt with and rejected all of appellant's requested findings so far as material here. That court found (1) that it had jurisdiction of the cause; (2) that the United States is deemed the landlord and is the proper party plaintiff; (3) that the Government's complaint was not bad as to form

(answering defendant's contention that L & T Rule 13 applied); (4) that the notice to quit was adequate; (5) that the District of Columbia Emergency Rent Act does not apply and (6) that the Lanham Act is not applicable to the project and that Executive Order 9070 in no way affects the maintenance of the action. These findings in the memorandum were adopted as "Trial Findings" by the court (R. 125). On May 15, 1947, the trial court entered an order denying defendant's motion for new trial and awarding possession to the Government (App. 43). Defendant appealed to the Municipal Court of Appeals (R. 126-129). By decision of September 10, 1947, that court affirmed and on the same date judgment of affirmance was entered (App. 44-52).

On September 20, 1947, under the provisions of Title 11 D. C. Code, sec. 773, appellant petitioned this Court for allowance of an appeal. In that petition appellant challenged the decision of the Municipal Court of Appeals on all questions it decided, i. e., that the United States was a proper party plaintiff, that the notice to quit was valid, that the complaint was bad as to form, that the provisions of the District of Columbia Emergency Rent Act were not applicable, and that the Municipal Court for the District of Columbia has jurisdiction to entertain the action. On January 16, 1948, this Court entered its order allowing an appeal (App. 53), but restricted the appeal to the two holdings last above stated.

STATUTES INVOLVED

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883, reads as follows:

SEC. 201. To the President for allocation to the War Department and the Navy Department for the acquisition of necessary land and the construction of housing units, including necessary utilities, roads, walks, and accessories, at locations on or near Military or Naval Establishments, now in existence or to be built, or near privately owned industrial plants engaged in military or naval activities, which for the purposes of this Act

shall be construed to include activities of the Maritime Commission, where the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission shall certify that such housing is important for purposes under their respective jurisdiction and necessary to the national defense program, \$100,000,000: *Provided*, That the average unit cost of such housing projects, including acquisitions of land and the installation of necessary utilities, roads, walks, accessories and collateral expenses shall not be in excess of \$3,500: *Provided further*, That in carrying out the purposes of this section the Secretary of War and the Secretary of the Navy may utilize such other agencies of the United States as they may determine upon: *Provided further*, That the Secretary of War and the Secretary of the Navy, at their discretion, are hereby authorized to rent such housing units, upon completion, to enlisted men of the Army, Navy, Marine Corps with families, to field employees of the Military and Naval Establishments with families, and to workers with families who are engaged, or to be engaged, in industries essential to the military and naval national defense programs, including work on ships under the control of the Maritime Commission. * * *

Section 5 (b) of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 791, Title 45 D. C. Code, sec. 1605 (b), reads as follows:

SEC. 5. *Prohibitions*.—(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommo-

dations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, or

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with and approved by the Commissioners of the District of Columbia.

Title 11, D. C. Code, sec. 755, provides as follows:

(a) The Municipal Court for the District of Columbia, as established by this subchapter shall consist of a criminal and a civil branch. The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia or the judges thereof on the effective date of this subchapter and in addition the said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of \$3,000 * * *.

Title 11, D. C. Code, secs. 305 and 306, defining the jurisdiction of the District Court of the United States for the District of Columbia, reads as follows:

11-305. The said court shall possess the same powers and exercise the same jurisdiction as the District Courts of the United States, and shall be deemed a court of the United States.

11-306. Said court * * * shall have cognizance * * * of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; * * *

ARGUMENT

This is an appeal under Title 11, D. C. Code, section 773 from a judgment of the Municipal Court of Appeals for the District of Columbia. Such an appeal is not a matter of right, but rests solely within the discretion of this Court. Rule 1 of this Court's Rules Governing Appeals From the Municipal Court of Appeals. While, as hereinbefore noted (p. 4, *supra*), appellant petitioned this Court to review all the questions decided by the Municipal Court of Appeals, this Court in its order allowing the appeal (App. p. 53) expressly limited the review to the two questions discussed herein. Appellant's argument (Br. 16-23) relating to whether the United States may maintain the action and whether the notice to quit was valid is therefore addressed to matters beyond the scope of the appeal. Since this Court's jurisdiction over appeals from the Municipal Court of Appeals is in all respects comparable to the jurisdiction of the Supreme Court by certiorari, it is believed that the same rule obtains. *Prudence Co. v. Fidelity Co.*, 297 U. S. 198, 205 (1936), and see Jurisdiction of the Supreme Court of the United States, Robertson and Kirkham, section 290, pp. 557-558, regarding limited grants of certiorari to the Supreme Court. Accordingly this brief deals only with the questions to which this Court limited its review and will not point out the reasons why it is believed that the decision of the court below on the other questions is correct.

The conditions imposed by the District of Columbia Emergency Rent Act on suits for possession do not apply where such a suit is brought by the United States as landlord

The property in suit is owned by the United States and was leased to appellant on a month-to-month basis. Absent the applicability of the District of Columbia Emergency Rent Act, the United States had an unquestioned right to repossess the property by the giving of the thirty-day notice to quit.

Appellant's contention is that the restrictions imposed by the Emergency Rent Act (Title 45, D. C. Code, sec. 1601 *et seq.*) are applicable here. Section 1604 provides that rentals for housing may not be advanced without the approval of the Rent Administrator, and section 1605 provides that no action to recover possession may be maintained "so long as the tenant continues to pay the rent to which the landlord is entitled," unless certain conditions exist, none of which obtain here. It is thus clear that to apply the statute results in restricting the United States and the destruction of its right to recover possession of the property.

A. *The United States is not subject to restrictions imposed by general statutes unless it is specifically named.*—It is a familiar principle that statutes of general import, but not naming the United States, do not operate to restrict or impair the rights of the United States. *Dollar Savings Bank v. United States*, 19 Wall. 227 (1873); *United States v. Herron*, 20 Wall. 251, 263 (1873); *United States v. American Bell Telephone Co.*, 159 U. S. 548 (1895); *United States v. Stevenson*, 215 U. S. 190 (1909); *United States v. Mine Workers*, 330 U. S. 258 (1947); *United States v. Wyoming*, 331 U. S. 440 (1947). Appellant states (Br. 24–25) that he has been unable to find a case where a contraction or limitation upon the jurisdiction of a court has been held inapplicable to the sovereign under this principle. He has overlooked *United States v. Amer. Bell Telephone Co.*, 159 U. S. 548, 554 (1895), where a statute cutting off appeals to the Supreme Court in a certain class of cases was held not to operate against the United States and that the latter continued to have the right to appeal.

And in *City of Springfield v. United States*, 99 F. 2d 860, 862 (C. C. A. 1, 1938) certiorari denied 306 U. S. 650 (1939) and *United States v. Okaloosa County*, 59 F. Supp. 426 (N. D. Fla. 1945) it was held that the provision of Section 24 (1) of the Judicial Code, 28 U. S. Code 41 (1) limiting the jurisdiction of federal courts to enjoin the assessment, etc., of state taxes, did not apply to suits brought by the United States. And see *Board of Com'rs of Pawnee County, Okl. v. United States*, 139 F. 2d 248, 250 (C. C. A. 10, 1943) certiorari denied 321 U. S. 795 (1944).

And in *United States v. Mine Workers*, 330 U. S. 258, 270 (1947) the court held that restrictions imposed by the Clayton Act upon "employers" did not apply to the United States, the court stating that "we cannot construe the general term 'employer' to include the United States, where there is no express reference to the United States and no affirmative grounds for believing that Congress intended to withhold an otherwise available remedy from the Government, as well as from a specified class of private persons." And in the same case the court dealt with a contention that section 4 of the Norris-LaGuardia Act, divesting the federal courts of jurisdiction to issue injunctions in a specified class of cases (labor disputes) applied to the United States. In holding that the statute did not bar the issuance of an injunction at the instance of the United States, the court, after noting that the statute was in general terms and did not expressly except the United States, stated (330 U. S. 272) that: "There is an old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." And at page 273 the court further states: "Congress was not ignorant of the rule which those cases reiterated; and, with knowledge of that rule, Congress would not, in writing the Norris-LaGuardia Act, omit to use 'clear and specific [language] to that effect' if it actually intended to reach the Government in all cases."

Congress was equally aware of the rule when it enacted the District of Columbia Emergency Rent Act, and accordingly, in the absence from that Act of clear and specific language

showing such an intention, the Act does not operate to diminish the rights and prerogatives of the United States.

Appellant's suggestion (Br. 25) that the United States, when it constructs low-rent housing, enters the field of private business and abandons its sovereignty, is without merit. All powers delegated to the federal government are governmental powers. Consequently all of its constitutional acts are governmental acts. *Van Brocklin v. Tennessee*, 117 U. S. 151, 158-159 (1886). And it is settled that the action of the United States in furnishing public housing is constitutional. *Cleveland v. United States*, 323 U. S. 329 (1945); *Keyes v. United States*, 73 App. D. C. 273, 119 F. 2d 444, certiorari denied 314 U. S. 636 (1941). It is doubly apparent where, as here, the action of the government is undertaken in the promotion of national defense.

B. *The District of Columbia Emergency Rent Act negatives any intention to include the United States.*—Quite apart from the rule of construction above discussed, an examination of the Emergency Rent Act shows its inapplicability to the United States. The purposes of the Act are set forth as follows (Title 45, D. C. Code, sec. 1601):

It is hereby found that the national emergency and *the national-defense program* (1) have aggravated the congested situation with regard to housing accommodations existing at the seat of government; (2) *have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations*; (3) have rendered or will render ineffective the normal operations of a free market in housing accommodations; and (4) are making it increasingly difficult for persons whose duties or obligations require them to live or work in the District of Columbia to obtain such accommodations. Whereupon it is the purpose of this chapter and the policy of the Congress during the existing emergency to prevent undue rent increases and any other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living *or otherwise impede the national-defense program.* [Italics supplied.]

A mere reading of the above shows that Congress did not have the United States in mind in enacting the Emergency Rent Act, since it could not have had in contemplation that the United States was an owner who would engage in "profiteering and other speculative and manipulative practices." The same conclusion follows from section 10 of the Emergency Rent Act (Title 45, D. C. Code, sec. 1610), providing penalties against owners who violate the Act. As was said by the Supreme Court in *United States v. Mine Workers*, 330 U. S. 258, 274, after examining the announced purposes of the Norris-LaGuardia Act. "These considerations, on their face, obviously do not apply to the Government as an employer." Indeed, the Act was intended to aid the national defense program and as we shall show *infra*, application of the Act to federal defense housing property would interfere with that program.

C. *The requirements of Congress, as set forth in the housing legislation under which the instant property was constructed, are irreconcilably in conflict with the conditions imposed by the Emergency Rent Act.*—It was stipulated (App. 17) that the property in question was constructed under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883. That Act (p. 4, *supra*) placed the rental of such housing accommodations in the discretion of the Secretary of the Navy and thus gave him the power to fix the rentals. If it had been intended by the Emergency Price Act to revoke that power and place it in the District Rent Administrator, express language would have been used to accomplish this. The Second Supplemental National Defense Appropriation Act, moreover, limited the classes of persons to whom housing could be so rented. To be eligible, a prospective tenant must be an enlisted man of the Army, Navy, Marine Corps with a family, or a field employee of the Military or Naval Establishments with a family, or a worker with a family who is engaged in an industry essential to the military and naval national defense programs. Obviously the primary objective was to limit these accommodations to the classes named and so promote the war program. The statute was enacted on September 9, 1940. The District of Columbia Emergency

Rent Act was enacted on December 2, 1941. Accordingly it would be strange indeed if in passing the Emergency Rent Act Congress intended to bring within its scope the housing here in issue, since the application of the Emergency Rent Act would nullify the objectives of the 1940 Act under which the housing was constructed.

For example, a tenant eligible for the accommodations and occupying the same might later become ineligible. That would occur if he ceased to be an enlisted man of the services, a field employee of the Military and Naval Establishments, or a worker engaged in essential war work. It would also occur if, although continuing to be a member of any of these classes, he ceased to be the head of a family. Since he became ineligible it would be the duty and the right of the Secretary of the Navy to oust him so that the accommodations could be rented to another who qualified under the statute authorizing the housing. If the Emergency Rent Act applied, such a tenant could not be removed by the Government so long as he continued rental payments, since, as the court below observed (App. 49), such change of status is not a ground for eviction under the Emergency Rent Act.

Appellant argues (Br. 27) that he is not in the position of being ineligible by reason of change of status. Conceding this, he misses the point of the lower court's reasoning, which is that Congress could not have intended the Emergency Rent Act to apply to this housing, since such anomalous situations would result.

Under this point appellant (Br. 26) refers to Title 42 U. S. C. 1522. This section authorizes the Federal Works Administrator to bring actions for recovery of possession of property "developed or constructed" under the Lanham Act, and appellant appears to argue that such section applies to this property. That matter is irrelevant to the question propounded by this Court. However it may be here pointed out that it was stipulated (App. 17) that the property involved was constructed under the Second National Defense Appropriation Act of September 9, 1940, 54 Stat. 872, 883, and that it was not constructed under the Lanham Act. But even if the property

were Lanham Act property, as appellant constantly refers to it, it would have no tendency to show that the Emergency Rent Act applied. That Act obviously applies only where the rentals to be charged are subject to regulation by the District of Columbia Rent Administrator. The Lanham Act was amended by the Act of January 21, 1942, 56 Stat. 12, Title 42 U. S. C. sec. 1544.³ Section 6 of that Act provided that the Administrator, that is, the Federal Works Administrator, "shall fix fair rentals, on projects developed pursuant to this Act, which shall be based on the value thereof as determined by him, with power during the emergency, in exceptional cases, to adjust the rent to the income of the persons to be housed, and that the rentals to be charged for Army and Navy personnel shall be fixed by the War and Navy Departments." This amendment was passed January 21, 1942,⁴ and thus followed the District of Columbia Emergency Price Control Act by less than two months. The amendment shows a clear purpose to place the control of rents on Government housing in the hands of federal officials administering the housing, and not in the hands of the District Rent Administrator, and further confirms the conclusion that such Government housing was not within the purview of the Emergency Rent Act.

At Br. 28 appellant argues that the OPA could have regulated the rent on this property. How that sustains appellant's primary contention, even if it be so, is difficult to understand, since it has no tendency whatever to establish a right of control in the District Rent Administrator.

It is submitted that the provisions of the Emergency Rent Act do not apply, and if that be true the Government was free to recover possession following service of the thirty-day notice.

³ The Lanham Act is the popular name for the Act of October 14, 1940, 54 Stat. 1125, 42 U. S. C., sec. 1521, *et seq.* Appellant is in error in listing sections prior to 1521 as parts of the Lanham Act, but it is immaterial here.

⁴ Appellant erroneously gives the date as January 21, 1941, at Br. 10.

The Municipal Court for the District of Columbia has jurisdiction of a suit brought by the United States to recover possession of real property

Since this is a suit for recovery of possession of real property located in the District of Columbia, it is clearly within the jurisdiction of the Municipal Court as to subject matter. Appellant's principal argument (Br. 13-15) is that since Title 11, D. C. Code, sec. 306, provides that the district court shall have cognizance of "all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants," the district court has exclusive jurisdiction of all civil actions brought by the United States and hence such suits may not be brought in the Municipal Court. Appellant thus fails to read the section for what it is, simply a statute empowering the District Court to adjudicate any civil action voluntarily instituted by the United States, and mistakenly construes it as a statute intended to restrict prerogatives of the United States.

The question is one of first impression in this Court, but the answer is to be found in decided cases dealing with the jurisdiction of federal district courts outside the District of Columbia. Title 11, D. C. Code, sec. 305, provides that the District Court of the United States for the District of Columbia shall have the same jurisdiction as the District Courts of the United States. Title 11, D. C. Code, sec. 306, provides that the District Court of the United States for the District of Columbia shall have cognizance of all civil actions where the United States is the plaintiff. These are but restatements of sections 3 and 5 of the Organic Act of the District of Columbia, 2 Stat. 103, 105-106, conferring jurisdiction on the local district court's predecessor. Those provisions have, in substance, always been in effect. (See history of the local district court reviewed in *Ridgely v. United States*, 45 A. 2d 475, 476 (Mun. App. D. C., 1945).) Thus, the present district court and its predecessors have always had the same jurisdiction, so far as

suits by the Government are concerned, as other district courts, and the decisions with respect to the district courts outside the District of Columbia necessarily control in determining the jurisdiction of the local district court.

28 U. S. C. sec. 41 (1), gives those district courts jurisdiction of "all suits of a civil nature, at common law or in equity, brought by the United States. * * *", a counterpart of Title 11, D. C. Code, sec. 306, defining jurisdiction of the local district court over such suits. It has been uniformly held that this provision does not give to the district courts exclusive jurisdiction of civil suits by the United States, but that the sovereign is free to institute its actions in any state court having jurisdiction of the subject matter. *United States v. Bank of New York*, 296 U. S. 463 (1935); *Merryweather v. United States*, 12 F. 2d 407, 409-410 (C. C. A. 9, 1926); cf. *Cotton v. United States*, 11 How. 228. Thus, in the *Cotton* case, the court stated (11 How. 231):

Although as a sovereign the United States may not be sued, yet as a corporation or body politic they may bring suits to enforce their contracts and protect their property, in the State courts, or in their own tribunals administering the same laws. As an owner of property in almost every State of the Union, they have the same right to have it protected by the local laws that other persons have. As was said by this court in *Dugan v. United States*, 3 Wheat. 181, "It would be strange to deny them a right which is secured to every citizen of the United States."

It may be noted that sections 9 and 11 of the Judiciary Act of 1789, 1 Stat. 73, 76, 78, expressly provided that the district courts should have jurisdiction over civil suits in which the United States is plaintiff, concurrent with the courts of the States, a provision continued by section 4 of the Act of March 3, 1815, 3 Stat. 244. While the express provision for concurrent jurisdiction was not carried into section 24 (1) of the Judicial Code, 28 U. S. C. sec. 41 (1), the law remained un-

changed. Thus, in *United States v. Bank of New York*, 296 U. S. 463, 479 (1935), the court stated:

* * * But the grant of jurisdiction [in 28 U. S. C. sec. 41(1)] to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction. It is a general rule that the grant of jurisdiction to one court does not, of itself, imply the jurisdiction to be exclusive. * * *

Appellant admits (Br. 15) the law to be so established, but seeks to explain the cases so holding as limited to situations where the United States sues in "superior or unlimited jurisdictional courts of the State." There is not the slightest basis for that contention. The decisions rest upon the proposition that the Government is not restricted to suing in the federal district courts, but may sue in any court having jurisdiction of the subject matter and the parties.

Since Title 11, D. C. Code, sec. 306, gives the District Court of the United States for the District of Columbia jurisdiction of civil suits by the United States in identical terms with those employed in 28 U. S. C. 41 (1) conferring jurisdiction of such suits upon other district courts, and since Title 11, D. C. Code, sec. 305, provides that the jurisdiction of the local district court shall be the same as that of other district courts, it follows that the local district court does not have exclusive, but concurrent, jurisdiction of civil actions by the United States, and that the latter is free to institute in the Municipal Court any civil action relating to subject matter within that court's jurisdiction.

Appellant points to nothing in the statutes conferring jurisdiction upon the Municipal Court which bars the United States from that court, nor does he advance any practical considerations which could justify a holding of such an intent on the part of Congress. The only reason advanced by appellant for urging this Court to deny to the United States a right conferred on every other property holder in the District of Columbia resides in the statement (Br. 14) that the acts conferring jurisdiction on the Municipal Court do not expressly authorize the Government to sue in that court. But "as an owner of prop-

erty in almost every State of the Union, they [the United States] have the same right to have it protected by the local laws that other persons have." *Cotton v. United States*, 11 How. 229, 231 (1850). The Government has, of course, the same right in the District of Columbia. Silence of a statute with respect to the United States will not operate to impair or deny a right to the United States. Where such result is claimed, it must clearly appear from the statute. (See pp. 8-10, *supra*.)

The court below, in holding that it had jurisdiction, relied upon its earlier decision in *Ridgely v. United States*, 45 A. 2d 475 (Mun. Ct. App., D. C., 1945). It is submitted that this decision is a sound and well-reasoned analysis of the law on the point and is correct.

Appellant cites the opinion of Mr. Justice Proctor in *United States v. Sheriff Motor Company*, 63 F. Supp. 685 (D. C., 1943). To the extent that the decision holds that the district court does have jurisdiction of a suit by the United States where the amount in controversy is less than \$3,000.00, it is undoubtedly correct, since, as shown, the district court has concurrent but not exclusive jurisdiction over such actions. Since the only question in the *Sheriff Motor* case was whether the district court had jurisdiction to entertain the suit, Mr. Justice Proctor's statement that it had *exclusive* jurisdiction was *obiter* and is erroneous. That decision simply reads the word "exclusive" into Title 11, D. C. Code, sec. 306, contrary to the authorities hereinbefore examined. It is interesting to note that while the learned Judge was well aware of and approved the decisions holding that restrictions upon the sovereign will not be read into a statute (63 F. Supp. p. 686), yet the conclusion reached by him operates to violate the principle since it would restrain the United States in its freedom to choose the forum for its litigation.

It is deemed appropriate to note that in *United States v. Kloman*, No. 9798, now pending in this Court, Mr. Chief Justice Laws of the District Court of the United States for the District of Columbia took a position diametrically opposed to that taken by Mr. Justice Proctor in the *Sheriff Motor* case. In the

Kloman case, an action by the United States for an amount less than \$3,000.00 was dismissed on the ground that the Municipal Court has exclusive jurisdiction of such actions. This also is erroneous. The effect of the holding is that the Municipal Court's jurisdictional statute impliedly repealed Title 11, D. C. Code, sec. 306, giving the district court jurisdiction of all civil actions instituted by the United States. It is a familiar rule, of course, that implied repeals are not favored. And while the statute giving the municipal court exclusive jurisdiction of civil actions for \$3,000.00 or less could and did take away any pre-existing right of ordinary litigants to bring such suits in the district court, it did not infringe upon such right of the United States since the Government was not named therein. (See discussion and authorities cited pp. 8-10, *supra*.)

Finally, there is no practical reason for holding that while Congress left the United States free to litigate in State courts, it barred the United States from the Municipal Court of the District of Columbia. As observed by the court below in *Ridgely v. United States*, 45 A. 2d 475, 477 (1945), the Municipal Court was created by Congress and its judges are by appointment from the President subject to confirmation by the Senate, in the same manner as provided for other federal courts. It was first created by the Act of February 17, 1909, 35 Stat. 623; its jurisdiction has been progressively enlarged by the Acts of March 3, 1921, 41 Stat. 1310, and April 1, 1942, 56 Stat. 190, and its importance, dignity, and competence was recognized by Mr. Justice Proctor in the *Sheriff Motor Co.* case (63 F. Supp. 685, 687.⁵ Moreover, it has vast experience with the subject matter of this action, a landlord-and-tenant proceeding. In these circumstances, it is submitted that Congress could not have intended the result argued for by appellant.

⁵ Appellant refers (Br. 13-14) to these statutes and to earlier acts relating to the courts of the Justices of the Peace and argues that since the United States could not sue in the Justice of the Peace courts, it cannot sue in the Municipal Court. The argument is based on a false premise since the United States was not barred from suing in the Justice of the Peace courts.

It is submitted, therefore, that the Municipal Court has concurrent jurisdiction, along with the district court, of actions by the United States for possession of real property, or where the amount in controversy is \$3,000.00 or less.

CONCLUSION

For the foregoing reasons it is submitted that the judgment appealed from should be affirmed. .

Respectfully.

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